

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

STEPHEN DAVIS,

Plaintiff,

v.

**Civil Action No. 3:15cv135
(Groh)**

R. VON BLANCHENSEE, et al.,

Defendants.

ORDER NOTIFYING PLAINTIFF OF DISMISSAL

On December 7, 2015, Plaintiff filed a complaint which appears to challenge his sentence calculation by the Bureau of Prisons and seeks as relief, among other things, monetary damages. The complaint is not on a court-approved form. Despite that, for administrative purposes, the Clerk of Court has docketed Plaintiff's complaint as a Bivens action. However, because Plaintiff refers to sentence calculation, it is possible that he intended to file a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

Because the pleading is not on a court-approved form, the Court is required to give Plaintiff notice that it is striking his pleading. See Local Rule Prisoner Litigation Procedure ("LR P. L.P.") 3.4.7.

The Court further advises Plaintiff and gives him an additional notice that it will **deny the Complaint and dismiss this action without prejudice within thirty (30) days from the date of this notice**, because Plaintiff has not complied with the Local Rules of Prisoner Litigation Procedure by filing his case on court-approved forms. See LR PL P. 3 and 31.2; LR Civ. P 41.01.

Therefore, if Plaintiff wishes to pursue this action, within 30 days, or by Wednesday, January 6, 2016, he must re-file his Complaint on a court-approved form. See LR PI P 3.1 and LR PL P 31.2¹ This case will then be closed, and a new case opened at that time.

Accordingly, **IT IS ORDERED** that:

1. The Clerk of Court shall send Plaintiff this Court's packet for filing a Federal Civil Rights Complaint (Bivens Action) and for filing a habeas petition pursuant to 28 U.S.C. § 2241. Plaintiff may file one or both.

2. The Clerk of Court is directed to hold the instant action in abeyance until Plaintiff re-files his action on the court-approved forms provided, then the instant matter will be **DENIED and DISMISSED without prejudice** and a new case opened.

3. Upon receipt of Plaintiff's pleadings on court-approved forms, or after 30 days, this matter will be **STRICKEN** from the active docket of the court.

IT IS SO ORDERED.

The Clerk is directed to mail a copy of this Order to the *pro se* Plaintiff by certified mail, return receipt requested, to his last known address as reflected on the docket sheet.

DATE: December 7, 2015.

s/ Robert W. Trumble

ROBERT W. TRUMBLE
UNITED STATES MAGISTRATE JUDGE

¹The Clerk of Court will provide Plaintiff with the appropriate forms.